

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0037
Motor Carrier Fuel Tax
For The Tax Periods of 1998 through 2000**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Motor Carrier Fuel Tax – Sufficiency of documentation

Authority: IC 6-6-4.1-4, IC 6-6-4.1-4.5, IC 6-6-4.1-2, IC 6-6-4.1-9.

The Taxpayer protests the motor carrier fuel tax assessment resulting from Taxpayer's lack of fuel tax documentation.

II. Penalty – Imposition

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The Taxpayer protests the assessment of a ten percent (10%) penalty.

FACTS

Taxpayer sells and installs fences and was assessed Motor Carrier Fuel Tax on Taxpayer's vehicles during an audit. More facts provided as necessary.

DISCUSSION

Pursuant to IC 6-6-4.1-4:

- (a) A tax is imposed on the consumption of motor fuel by a carrier in its operations on highways in Indiana. The rate of this tax is the same rate per gallon as the rate per gallon at which special fuel is taxed under IC 6-6-2.5. The tax shall be paid quarterly by the carrier to the department on or before the last day of the month immediately following the quarter.
- (b) The amount of motor fuel consumed by a carrier in its operations on highways in Indiana is the total amount of motor fuel consumed in its entire operations within and without Indiana, multiplied by a fraction. The numerator of the fraction is the total number of miles traveled on

highways in Indiana, and the denominator of the fraction is the total number of miles traveled within and without Indiana.

- (c) The amount of tax that a carrier shall pay for a particular quarter under this section equals the product of the tax rate in effect for that quarter, multiplied by the amount of motor fuel consumed by the carrier in its operation on highways in Indiana and upon which the carrier has not paid tax imposed under IC 6-6-1.1.

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Additionally, a surcharge tax is imposed on the consumption of motor fuel by a carrier in its operations on highways in Indiana at a rate of \$0.11 per gallon. IC 6-6-4.1-4.5.

The tax applies to, among others, trucks having a gross weight of greater than twenty six thousand pounds or vehicles used in combination if the gross weight is greater than twenty six thousand pounds are subject to the tax. IC 6-6-4.1-2

Taxpayer maintains various vehicles, some which are subject to tax only when a trailer is attached. During the audit, the auditor used four miles per gallon for fuel consumption after it was determined insufficient documentation existed to show otherwise.

Taxpayer notes that the auditor's figures are inflated because only certain vehicles were subject to tax when a trailer was attached and the figures do not accurately reflect what Taxpayer actually owes. Taxpayer does not dispute that they lacked sufficient documentation for the periods in question.

IC 6-6-4.1-9 states:

If there are no records showing the number of miles actually operated per gallon of motor fuel and if section 11(c) of this chapter is inapplicable, it is presumed for purposes of this chapter that one (1) gallon of motor fuel is consumed for every four (4) miles traveled.

Consequently, Taxpayer's protest is respectfully denied.

FINDING

The Taxpayer's protest is respectfully denied.

II. Penalty – Imposition

DISCUSSION

Taxpayer protests the ten percent negligence penalty. The Department may impose a ten percent (10%) negligence penalty on the amount of deficiency as determined by the Department. IC 6-8.1-10-2.1. Also, 45 IAC 15-11-2 states in part:

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- (b) “Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.
- (c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:
- (1) the nature of the tax involved;
 - (2) judicial precedents set by Indiana courts;
 - (3) judicial precedents established in jurisdictions outside Indiana;
 - (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
 - (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable causes is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer argues that while the fuel tax records may have been insufficient for the periods in question, vast improvements have been made. While it is clear from the documentation supplied by Taxpayer at the hearing that there have been improvements since the audit, it remains that during the periods covered by the audit, there was inattention on the part of the Taxpayer with regards to maintaining their records. Thus, Taxpayer’s protest is respectfully denied.

FINDING

The Taxpayer’s protest is respectfully denied.